

Appl. No.: 09/876,896
Amtd. Dated: 12/30/04
Reply to OA of 8/2/04

REMARKS

This amendment is responsive to the Action dated August 2nd, 2004. With this response, claims 1-14 have been selectively amended to merely remove lingering informalities, while new claims 15-25 have been added. Support for the amendments and the new claims can be found in the original specification, claims and/or drawings. In this regard, no new matter has been introduced.

§102(b) Rejection of Claims 1-8

In paragraph 2 and 3 of the Action, claims 1-8 were rejected as being anticipated by a patent issued to Omura (USP 5,235,615) pursuant to 35 USC §102(b). In response, Applicant traverses the rejection of these claims.

Applicant disagrees with the characterization of the Omura reference in the Action. For example, despite the assertion in the Action, Applicant cannot find disclosed within Omura the claimed element of:

determining a time delay between reception at a predetermined point in said coverage area of a first signal S₁ transmitted from a first transmitter at a first frequency f₁ and a second signal S₂ transmitted from a second transmitter at said first frequency f₁.

In rejecting the claim, the Action points to two disparate discussions within the Omura document, the first describing that multiple remote units 113, 114 communicate with a common base station 110; and a second (the Abstract) introducing the term "time delay". Applicant notes that the time delay referenced in the Abstract is the time delay between transmitting an access signal (to a remote device, i.e., received at a first point in the coverage area) and receiving an echo of the access signal (from the remote device, i.e., received at a second point in the coverage

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area). Thus, neither of these two citations, alone or in combination teach or suggest determining a time delay between two signals, emanating from two different transmitters on a common frequency and received at a common point in the coverage area.

It is respectfully noted that anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

In view of at least the foregoing distinctions, Applicant respectfully submits that the Action has failed to present a prima facie case of anticipation of, e.g., claim 1. Accordingly, Applicant respectfully requests that the §102(b) rejection of claim 1 be withdrawn.

Applicant notes that claim 5 and 7 enjoy features similar to those described above. In this regard, Applicant respectfully submits that the Action has failed to present a prima facie case of anticipation as to claims 5 and 7, pursuant to arguments analogous to those introduced above. Accordingly, Applicant respectfully requests that the § 102(b) rejection of such claims be withdrawn.

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Applicant notes that claims 2-4, 6 and 8 each depend from patentable base claims 1, 5 or 7, respectively. Thus, in addition to any independent bases for patentability, Applicant respectfully submits that claims 2-4, 6 and 8 are likewise patentable over the Omura reference by virtue of at least such dependence on patentable base claims 1, 5 or 7. Accordingly, Applicant respectfully requests that the §102(b) rejection of such claims be withdrawn.

§102(b) Rejection of Claims 1, 2 and 4-8

In paragraph 4 of the Action, claims 1, 2 and 4-8 were rejected as being anticipated by a patent issued to Teder, et al. (USP 5,828,659) pursuant to 35 USC §102(b). In response, Applicant traverses the rejection of these claims.

Applicant disagrees with the characterization of the Teder reference in the Action. For example, despite the assertion in the Action, Applicant cannot find disclosed within Teder the claimed element of:

determining a time delay between reception at a predetermined point in said coverage area of a first signal S_1 transmitted from a first transmitter at a first frequency f_1 and a second signal S_2 transmitted from a second transmitter at said first frequency f_1

In contradistinction to the disclosure of claim 1, the citation in the Teder reference appears to teach the transmission of a common signal (i.e., a common control channel) from disparate remote transmitters (BS1 and BS2) to a common location (the remote unit) (Fig. 1; col. 4, lines 35-43).

In view of at least the foregoing, Applicant respectfully submits that the Action has failed to present a *prima facie* basis for the rejection of, e.g., claim 1. Accordingly, Applicant respectfully requests that the §102(b) rejection of such claims be withdrawn.

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Applicant notes that claims 5 and 7 enjoy features similar to those of claim 1, and are likewise patentable over the Teder reference for reasons analogous to those presented above. Accordingly, Applicant respectfully requests that the §102(b) rejection of claims 5 and 7 be withdrawn.

Applicant submits that claims 2, 4-6 and 8 each depend from patentable base claims 1, 5 or 7, respectively. Thus, in addition to any independent bases for patentability, Applicant respectfully submits that claims 2, 4-6 and 8 are likewise patentable over the Teder reference. Accordingly, Applicant respectfully requests that the §102(b) rejection of such claims be withdrawn.

Double Patenting Rejection

Without accepting or adopting the characterization in the Action of either the pending application or the parent patent, Applicant files herewith a terminal disclaimer to overcome the double patenting rejection. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

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CONCLUSION

Applicant respectfully submits that claims 1-14, as amended, and new claims 15-25 are in condition for allowance and such action is earnestly solicited. *The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.*

Please charge any shortages and credit any overcharges to our Deposit Account number 50-0221.

Respectfully submitted,
AROGYASWAMI J. PAULRAJ, ET AL.

Date: December 30, 2004

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